

No. 82-960

In the Supreme Court of the United States
OCTOBER TERM, 1982

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

CITY DISPOSAL SYSTEMS, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

KENNETH J. MCINTYRE
Dickinson, Wright, Moon,
Van Dusen & Freeman
800 First National Building
Detroit, Mich. 48226
(313) 223-3500

PETITION FOR CERTIORARI FILED DECEMBER 9, 1982
CERTIORARI GRANTED MARCH 28, 1983

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-890

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CITY DISPOSAL SYSTEMS, INC.

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT*

INDEX

	Page
Chronological List of Relevant Docket Entries	1
Excerpts from Transcript of Proceedings of Hearing in Board Case No. 7-CA-16792	2
Witnesses:	
James Brown	
Direct	4
Cross	14
Redirect	17
Walter Davis	
Direct	18
Frank Hamilton	
Direct	21
Cross	27
Redirect	28
John Calandra	
Direct	31
Cross	31
James Brown (recalled)	
Recross	32
Redirect	33

II

	Page
David Ammerman	
Direct	33
Otto C. Jasmund	
Direct	38
Cross	46
Recross	48
Robert Madary	
Direct	49
Cross	52
Redirect	54
Keith W. Hall	
Direct	55
Exhibits	
General Counsel's Exhibit 2 (excerpts)	61
Respondent's Exhibit 4	66
Respondent's Exhibit 10 (page 1)	67
Respondent's Exhibit 11	68
Order of the Supreme Court granting certiorari	69

CHRONOLOGICAL LIST OF RELEVANT
DOCKET ENTRIES

In the Matter of: City Disposal Systems, Inc.
Case No.: 7-CA-16792

- 9. 7.79 Charge
- 10. 3.79 Answer to Unfair Labor Practice Charge
- 10.19.79 Complaint and Notice of Hearing
- 10.22.79 Answer to Complaint
- 4.11.80 Hearing
- 4.17.80
- 1.15.81 Judge's Decision
- 2. 5.81 Request for Oral Argument
- 2. 9.81 Exceptions
- 6. 9.81 Decision and Order of National Labor Relations Board
- 7.22.82 Opinion of Court of Appeals

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

Case No. 7-CA-16792

IN THE MATTER OF:
CITY DISPOSAL SYSTEMS, INC.
and
JAMES BROWN, AN INDIVIDUAL

NATIONAL LABOR RELATIONS BOARD
*300 Patrick V. McNamara Federal
Building, Room 389-A
Detroit, Michigan 48226
Friday, April 11, 1980*

Pursuant to notice, the above-entitled matter came on for hearing at approximately 10:00 o'clock, A.M.

BEFORE:

The Honorable LEONARD M. WAGMAN
Administrative Law Judge

APPEARANCES:

MS. BETSEY ENGEL, ESQ.
300 Patrick V. McNamara Federal Building
477 West Michigan Avenue
Detroit, Michigan 48224,
Counsel for the General Counsel.

MR. MEYER W. LEIB, Esq.

LEIB & LEIB

24800 Northwestern

Suite 106

Southfield, Michigan 48075

Appearing for Respondent, City Disposal Systems,
Inc.

[4] [April 11, 1980, session]

CONTENTS

<i>Witness</i>	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
James Brown	13	48	77	
Walter Davis	79	85	93, 100	94
Frank Hamilton	103	121	140	144
Albert Pierson	150	159		
 <i>Exhibits</i>	 <i>For Identification</i>		 <i>In Evidence</i>	
General Counsel's	4		5	
1(a) through (e)				
GC-2	10		10	
Respondent's 1	49		50	
R-2	52		54	
R-3	64		65	
R-4	67		68	
R-5	92		93	
R-6	98		—	
R-7	125		126	
R-8	127		128	
R-9(a) through (p)	131		—	
	* * * *			

[13] JAMES BROWN,
a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined and testified as
follows:

* * * *

DIRECT EXAMINATION

BY MS. ENGEL:

Q Will you please state your name and address for the record?

A James R. Brown. I live at 18134 Riopelle, City of Detroit.

Q Mr. Brown, turning your attention to May of 1979, were you employed?

A Yes, I was.

Q Where were you employed?

A City Disposal Systems.

Q And when did you start working at City Disposal Systems?

A November 3, 1975.

Q What was your job classification at City Disposal?

[14] A Truck driver.

Q In 1979, were you assigned to drive any particular truck for City Disposal?

A Yes.

Q What truck was that?

A Truck 245.

Q And who was your immediate supervisor?

A Otto Jasmund.

Q Was there a union at City Disposal?

A Yes, there was.

Q What union was that?

A Teamsters.

Q Did the Teamsters have a contract with City disposal?

A Yes, they did.

Q Did that contract mention anything about safety?

A Yes, it does.

Q Do you, by any chance, recall the section number?

MR. LEIB: Just a minute. I think counsel knows that the document speaks for itself.

Q Okay. Now, Mr. Brown, turning your attention to Saturday, May 12, 1979, did you work that day?

A Yes, I did.

Q When did you report for work?

A Four o'clock, a.m.

Q What did you do after you reported to work?

[15] A I checked the truck out for the oil, the water, and flat tires and proceeded to the land fill.

Q How many loads did you take out that day?

A I believe it was four.

Q How was your truck running that day?

A The first two loads, it was running fairly well. On the third and fourth, I commenced to having a small problem.

Q What was the problem?

A The fifth wheel bracket had broke loose, the weld had broken and it caused the back of the trailer to sway.

Q Okay, now you said you took four loads out to the land fill that day. Other than this problem with your truck, which I believe is truck 245, is that correct?

A That's correct.

Q Did anything else happen out at the land fill?

A On my fourth or last load, as I entered the yard there was another truck that was coming behind me.

Q Who was driving that truck?

A Frank Hamilton.

Q And what truck was he driving?

A 244.

* * * *

[16] A As I entered the land fill, I noticed the truck coming up behind me was coming pretty fast and I was sitting in the middle of the street so I thought that he wasn't going to be able to stop in my opinion, and I pulled on into the dump and pulled around out of his way so that he would have enough room to stop the vehicle.

Q And did truck 244 stop?

A He eventually stopped, yes.

Q Now, after this incident, what did you do after?

A I got out of the truck and went into the yard which is at the land fill and I asked Frank Hamilton what was the problem. He said—

* * * *

[18] Q Okay, Mr. Brown, you said you spoke to Hamilton.

A Yes, I did.

Q Why don't you go on and tell us what the two of you talked about.

* * * *

A Frank Hamilton related to me that he was having difficulty in stopping the truck because the brakes wasn't holding and the wheels was smoking and there was a lot of smoke around the truck at the particular time because the oil was running out on the brake drum.

Q Did you see the smoke?

A Yes, I did.

Q Did you return to work after this incident?

A Yes, I went on and dumped the load and I returned my truck to the yard which is in the City of Detroit.

Q Now, after you returned your truck to the yard in the City of Detroit, did you speak to anyone?

A Yes.

Q Who did you speak to?

A I spoke to Dave Ammerman and Frances Castelono.

Q Okay, who is Mr. Ammerman?

[19] A Ammerman is the head mechanic.

Q And Mr. Castelono, what was his position?

A He was supervisor.

Q Where were you when you spoke to them?

A I spoke to them out in the yard.

Q Did you speak to them anywhere else?

A Yes.

Q Where was that?

A In the driver's room.

Q Now, was anyone else present when you spoke to them?

A Frank Hamilton was present also.

Q Now, in this conversation—

MR. LEIB: Counsel, are we speaking of May 12?

MS. ENGEL: Yes, we're still on May 12.

MR. LEIB: All right.

Q Now, in this conversation with Mr. Ammerman and Mr. Castelono, what was said at that time and by whom?

A I told Frances Castelono and Dave Ammerman that my trick was—that the fifth wheel bracket had broken and that it was in need of repair. Dave Ammerman and Frances Castelono checked the truck out and definitely said that it was in need of repair. Also, there was Mr. Leach there, that he is the welder and he verified the fact that the weld had broken on the bracket and it was in need of rewelding.

Q Okay, now, was this in the driver's room?

[20] A This was in the driver's room?

Q Okay. Now, you said that Mr. Hamilton was there also. Did he participate in this conversation?

A Yes, he did.

Q And how did he participate?

A I was explaining to Frances about the repair on the truck and Frank Hamilton asked Frances—

MR. LEIB: Again, objection, your Honor.

JUDGE WAGMAN: Okay. The same rule.

MR. LEIB: Okay.

JUDGE WAGMAN: I'm not going to receive it for the truth of the matters as[s]erted.

MS. ENGEL: Okay.

A Frank Hamilton asked Frances Castelono when he was going to repair his truck. He said, "I almost hit Brown at the land fill. What are you going to do, wait till I tear up someone or kill someone before this truck gets repaired?"

Q Now, after this conversation—first of all, was there any further discussion in this conversation?

A Yes, there was.

Q And what was that, and by whom?

A Frances Castelono said that they would repair my truck over the weekend, which was Saturday and it would be repaired Sunday, and for me to punch out and go home. And he said [21] that he would repair 244, which was Frank's truck, over the weekend too. Dave Ammerman said that we wouldn't be able to repair it because we don't have brake shoes for this particular truck. So he said,

"We'll get to it"—Frances said, "We will get to it first thing Monday morning."

Q Were you familiar yourself with truck 244?

A Yes.

Q How were you familiar with it?

A I had driven the truck in the past and I had put in repair orders for it. I was also supervisor and I received numerous write-ups on this particular vehicle.

Q When were you a supervisor?

A In—from March of '77 to, I believe it was March of '78.

* * * *

Q Mr. Brown, you said you had driven 244 in the past. [22] Could you remember when that was or tell us when that would have been?

A I think it was May of '78.

* * * *

[37] Q Okay, now, back to May of 1979. What was your next day of work after May 12, 1979?

A May 14, 1979.

Q And what did you do after reporting in to work that day?

A I reported for work at 4:00 o'clock that morning. I [38] checked out the oil and the water and to see if I had any flat tires on truck 245. I got my bill signed and I proceeded to the land fill.

Q Did you have any problem with truck 245 that day?

A Yes, I did.

Q What was the problem?

A As I reached—

MR. LEIB: We will stipulate on the record that this man had a problem with truck 245, returned it to the garage and that it was agreed by the company that there was something wrong with truck 245.

JUDGE WAGMAN: How's that?

MS. ENGEL: I have no problem with that.

JUDGE WAGMAN: Will you join the stipulation?

MS. ENGEL: Sure, I'll join that.

JUDGE WAGMAN: Thank you. I accept the stipulation. Now, on to 244.

MS. ENGEL: Right.

Q Now, Mr. Brown, after you returned to the garage that day and reported the problem with 245—first let me ask you this: Who did you report it to?

A I reported the incident to Otto Jasmund.

MR. LEIB: We will stipulate that it was—that he did talk to—

MS. ENGEL: Your Honor, I would prefer just to go [39] through the witness' testimony at this time.

JUDGE WAGMAN: All right.

Q Is Mr. Jasmund the first person you spoke to when you returned to the company?

A No, he's not.

Q Who did you speak to before Mr. Jasmund?

A I spoke to Dave Ammerman.

Q And where did you speak to Mr. Ammerman?

A In the garage.

Q Was anyone else present?

A Keith Hall and one other mechanic.

Q What was said at that time and by whom?

A I told Dave Ammerman that they had not repaired my truck and that it was still broke, and he said they was unable to do so over the weekend and that the truck would be down for the rest of the day, for me to punch out and go home.

Q Now, after this conversation with Mr. Ammerman, what did you do?

A I went to the driver's room, and above the driver's room is the supervisor's office. I went up and told Otto that my truck was down and Dave Ammerman said for me to go home.

Q Okay, now, when you refer to Otto, who do you mean?

A Otto Jasmund is the supervisor.

[40] Q Okay. Now, where is the supervisor's office in relation to the driver's room?

A It's right off of the driver's room up two steps.

Q And is this located in 1550 Harper?

A Yes, it is.

Q After you spoke to Otto, where did you go?

A I stayed in the driver's room.

Q Was anyone else present?

A Walter Davis was present and Al Parson, I believe his last name is.

Q Okay, now, what was said at this time and by whom?

A Otto said to me, "Just a minute," and he left the driver's room—

MR. LEIB: I can't hear you.

A Otto Jasmund said, "Just a minute," and he left the driver's room.

Q Okay, and did he return?

A Yes, he did.

* * * *

[41] Q Mr. Brown, I'm going to ask you to start again describing what was said in this conversation in the driver's room and by whom.

A Start from the time I brought the truck back or where I left off?

Q When you entered the driver's room.

A I entered the driver's room and proceeded up to the supervisor's office and I told Otto Jasmund that Dave Ammerman said that my truck was down and they had not repaired it. It would be down the rest of the day, for me to punch out and go home.

Q What did Otto say?

A He said, "Just a minute," and he left the driver's room.

Q Did Mr. Jasmund return to the driver's room?

A Yes, he did.

Q About what period of time would you say expired?

A About three to five minutes.

Q What was said and by whom when Mr. Jasmund returned?

A Otto returned and he said, "Brown's truck is going to be down for the rest of the day," and for me to punch out and go home.

Q And who else was there at that time?

A Walter Davis and Al Parson.

Q Did the conversation continue?

[42] A It didn't extend—it continued, yes, for a brief minute.

Q Okay, what else was said and by whom?

A I asked Otto why did Dave have a right, as being a mechanic, to tell me to go home? Why couldn't I just help him in the garage or chase parts as we normally would do if the truck was down? And Otto Jasmund told me, he said, "There's nothing to do, Brown, you might as well go home." And he went back into his office.

Q Okay. What did you do at that point?

A I talked to Walter Davis a little while, and I was talking to Mr. Davis, one of the other drivers, for a few minutes.

Q Did you have any further conversation with Otto that day?

A Yes, I did. He came back out of the supervisor's office into the driver's room, and he said, "Brown, do you want to take truck 244?"

Q And what did you say?

A I told him no, I did not.

Q What else was said in that conversation?

A He said, "Well, why don't you want to take it?" And I said, "Well, Otto, the truck has problems." And do you want me to—

Q Please continue.

[43] A He said, "Well, Brown, I'm tired of hearing all this"—can I say it?

Q Yes, you can.

A He said, "I'm tired of hearing all this shit about these damn trucks being this or that, something's wrong with them; you don't want to take one truck and another guy don't want to take a truck and we have all this garbage out here to haul." And I said, "Hey, I'm tired of it too. I came in here to work. They told me my truck was going to be repaired. It was not. I be here every morning. I come to work and you want to send me home." I said, "This is—I don't understand this."

Q Now, did you speak to anyone else in management that morning?

A Yes.

Q Who?

A Bob Madary.

Q What is his position?

A At that time, I didn't know what it was.

Q Is he a supervisor?

A They say—according to my knowledge now, he's a supervisor.

Q And who was present when you spoke to Madary?

A Otto Jasmund, Walter Davis and Al Parson, I believe.

Q Okay. And when was this when you spoke to Madary?

[44] A Right preceding the conversation I had with Otto Jasmund.

Q What was said in that conversation and by whom?

A Bob said, "Brown, why don't you go ahead on and take the truck." I said, "No, Bob, I don't want to take the truck because the truck has got problems and I don't want to drive it."

Q And what truck are you referring to now?

A Truck 244.

Q Continue with what was said and by whom.

A He said, "Brown, you know half the trucks around here have problems. If we go around trying to solve all the problems with the trucks we have, we never would get all this garbage hauled." He said, "We've got all this garbage out here to haul and you tell me about you don't want to drive." I said, "Bob, what you going to do, put the garbage ahead of the safety of the men?" And he said, "Oh, I don't want to hear that shit," and he walked on back into the supervisor's office.

Q Now, during the sequence of these conversations, did you punch out?

A I had punched out when Otto first came in and told me to punch out and go home.

Q After Madary left, what did you do?

A I stayed around and talked to Walter Davis for a little [45] while longer.

Q Then what did you do?

A I left.

Q Where did you go after you left?

A I went home.

Q Did you speak to anyone else that day about work?

A Yes, I received a call about 12:00 or so from Mr. John Calandra.

Q And who is John Calandra?

A He is the business agent of Local 247.

Q Have you ever spoken to Mr. Calandra before?

A Yes, I have.

Q Did you recognize his voice that day?

A Yes, I did.

Q Did he identify himself when he called you?

A Yes, he did.

Q What was said in that conversation?

A He said, "Brown, the company has terminated you for refusing to drive truck 244," and I said, "What?" I said, "Well, man, there's something wrong with the truck," and he said, "Well, you better get down here so we can get this matter straightened out.

Q Did you return to work?

A Yes, I did.

Q About what time was that?

[46] A About 12:30.

Q And what happened when you returned to work?

A We had a meeting in the supervisor's office at 1550 Harper with Otto Jasmund, Bob Madary, John Calandra and myself.

Q And what was said at that time and by whom?

A I don't remember all the conversation but I asked Otto what was the problem. He said, "Brown, we have found out that we have a right to discharge you or as a voluntary quit for refusing to drive a truck." John Calandra said, "Hold it, Otto," he said, "maybe we can get this thing straightened out." And he said, "If the truck had problems," he said "why don't you just put the man back to work if he felt the truck had problems." And Otto said, "No, I don't want to."

Q And did Mr. Madary say anything?

A John Calandra asked Bob Madary what did he think about it, and Bob Madary said, "Well, I go along with Otto. No, we don't want him."

MS. ENGEL: I have no further questions.

* * * *

[48]

CROSS-EXAMINATION

BY MR. LEIB:

Q Mr. Brown, you were assigned truck number 245, isn't that true?

A That's true.

Q You had been driving 245 for all of the year 1979 prior to this particular incident.

A Yes.

Q And only truck 245.

A Yes.

Q You had not driven any other truck, isn't that correct?

A That's not correct.

Q Didn't you only drive truck 245 during the year 1979.

MR. ENGEL: Objection, Your Honor, that's irrelevant.

JUDGE WAGMAN: Overruled.

A May I have the question again, please?

Q During the year 1979, the only truck you ever drove was truck 245.

A No, that's not correct.

Q Tractor?

A Tractor.

Q Okay. But that was the only tractor you drove was 245.

A No.

[49] Q What other one did you drive?

A I drove truck 246.

Q When was that?

A It was in '79. I don't remember the exact date.

* * * *

[50] Q And according to that document, you drove truck 245, did you not, on Saturday?

A Yes, I did.

Q And you drove it on four occasions—

A That's correct.

Q On Saturday, May 12.

A Yes.

Q You started out that morning at 4:30 in the morning, did you not?

A That's correct.

Q And you concluded your work at what time?

A I don't remember the exact time. Approximately 2:00 or 3:00.

Q Now, you are required, are you not, to drive from the place of operation of City Disposal Systems, which is located where?

A At 1550 Harper in the City of Detroit.

[51] Q All right. From 1550 Harper, you drive to a dump site, isn't that correct?

A That's correct.

Q And that dump site is located where?

A In Sumpter, Michigan.

Q And that's how many miles?

A Approximately 37 miles.

Q Okay. And so that would be approximately 75 miles, return, both ways, up and back?

A Yes.

Q Would you say that each trip would take, going and coming, approximately three, three and a half hours?

A No, I would not.

Q How many hours would it take?

* * * *

A Depending on the weather and the condition of the truck.

Q Normal conditions.

A Normal conditions it would still depend on the truck and how much weight you were carrying.

[52] Q With reference to your particular truck, no other truck, just yours, how long would it take just for one load?

A To drive out and back?

Q Right.

A Approximately two hours and fifteen minutes.

Q All right. And four loads?

A Take you roughly seven, eight hours—depending—eight hours or so.

Q Would you work more than that? Ten hours?

A Yes, sometimes more than that too.

* * * *

[65] Q Mr. Brown, under the daily driver rules concerning the equipment, before leaving a morning with the truck, certain requirements were required of the driver to make sure that everything was done properly. Were you familiar with those rules, isn't that correct?

A That's correct.

Q So you knew then, both from in a supervisory position as well as an hourly rated employee or an employee who received funds other than on an hourly rated basis, that you were to [66] comply with these particular rules governing the equipment, is that correct?

A Yes.

Q Okay. Now, Mr. Brown, you filed in fact a grievance, did you not, with your local?

A Yes, I did.

* * * *

Q Mr. Brown, you filed a grievance on May 15, 1979—

* * * *

[67] A Yes, I did.

* * * *

JUDGE WAGMAN: Is that your signature on the bottom?

A Yes, it is.

JUDGE WAGMAN: It's known as Respondent's Exhibit 4.

* * * *

[71] Q And you refused a direct order by Mr. Otto Jasmund to [72] take truck 244?

A No, I did not refuse a direct order.

Q You would not drive truck 244, would you?

A He asked me if I wanted to. He didn't order me to drive the truck.

Q Oh, I see. Now, your position is that you were never ordered to drive the truck, that it was up to your voluntari-

ness as to whether or not you wanted to, is that what you're saying?

MS. ENGEL: Objection.

JUDGE WAGMAN: I don't want to know what his conclusion is. I want to know what he said. I'll make the conclusion. You're going to take away my whole job. All I want you to do is ask him what he said and what the other man said to him. Don't ask for a summary because I'll have nothing to do.

Go ahead.

Q Did Mr. Otto Jasmund direct you to take truck 244 out?

A No.

Q He never told you directly to take truck 244 out?

A No, he did not.

Q Did Mr. Madary direct you to take truck 244 out?

A No, he did not direct me to.

Q Did they ever request you to take 244 out?

A They requested me to take it, yes.

Q You refused to do so.

[73] A Yes, I did.

Q Have you ever been arrested and convicted of a felony?

A Yes, I have.

Q How many different times have you been arrested and convicted of a felony?

A Once.

Q And what felony was that you were arrested and convicted on?

A Uttering and publishing.

* * * *

[77] REDIRECT EXAMINATION

BY MS. ENGEL:

Q Mr. Brown, did you tell Otto Jasmund why you wouldn't [78] drive the truck 244?

A Yes, I did.

MR. LEIB: Object that it's been testified to an direct examination.

JUDGE WAGMAN: Okay. Overruled. Did you?

A Yes, I did.

Q What did you tell him?

A I told him that the truck had problems and I didn't want to drive it.

Q Did you tell Bob Madary why you didn't want to drive the truck?

A Yes, I did.

Q What did you tell him?

A I told Bob Madary that the truck had problems, that I didn't want to drive it.

* * * *

[79] WALTER DAVIS,
a witness called by and on behalf on the General Counsel,
being first duly sworn, was examined and testified as
follows:

* * * *

[80] DIRECT EXAMINATION

BY MS. ENGEL:

Q Mr. Davis, please state your full name and your address for the record.

A Walter Davis, 4061 Fourth Street.

[81] Q What city is that located in?

A Detroit.

Q And that's in the state of Michigan?

A Right.

Q Are you employed, Mr. Davis?

A Yes.

Q Where are you employed?

A City Disposal.

Q And where is that located?

A 1550 Harper.

Q Is that in Detroit also?

A Yes.

Q When did you start working for City Disposal Systems?

A 4-10-78.

Q What is your job classification there?

A Truck driver and machine operator as of now.

Q Who is your immediate supervisor?

A Otto.

Q What is Otto's last name?

A I think it's Jasmund.

Q Do you know Mr. James Brown?

A Yes.

Q How do you know Mr. Brown?

A By working there as a truck driver.

Q When you say there, where you are referring to?

[82] A City Disposal.

Q And turning your attention to May 14, 1979, were you at work that day?

A Yes.

Q Did you speak to James Brown that day?

A No, not directly. I was in the room when he came in.

Q What room were you in?

A The driver's dispatcher's room.

Q And where is that located?

A It's a little office that most of the drivers hang around in. It's where the time clock is. It's where we clock in every morning.

Q Is that at the Detroit location?

A Yes.

Q And what were you doing in the driver's room?

A I was waiting till my truck got fixed. There was something wrong with it. I can't remember exactly what was wrong with it, but it was down and I was just waiting there.

Q Now, when Brown came into the room, who else was present?

A I think Al Parson. I think that's his last name.

Q And was anyone else around?

A Not at the present.

Q When Mr. Brown came in, what did he do?

A He came in expressing that he guess he would go home [83] because his truck was down.

Q Did he speak to anyone in management?

A Well, at that point, then Otto came out of another little office that was right close where it was and he came out and asked Brown what was wrong. So Brown said his truck

was down. Something was wrong with it, that they were supposed to have fixed it but it still wasn't fixed. So Otto said then, "I'll go out and check." So when Otto gets back, he made the statement, said, "Well, might as well punch out and go home because they're not going to do anything for you now."

Q What happened at that point.

A And they stood around and started swapping words, Brown punched out, and Otto says, "Well, why don't you stick around till you can drive 244?" Brown replied back, said, "No, there's something wrong with that truck," just like that.

Q Did the conversation continue after that?

A Yes.

Q And what happened? What was said and by whom?

A So Brown said something was wrong with the brakes on the truck, said there was a grease seal or something leaking cause it to be affecting the brakes. So then Otto said, "Well, you might as well go on home then," again. So then they got in a big rigamarole, swapping word for word, swearing going on.

Q Now, was anyone else in management present at any time while [84] you were in the driver's room?

A Well, about that time time then, Bob Madary came out and they was in such a raise [*sic*] then, that's when I turned and walked out of the door.

Q So were you present at any time when Mr. Madary was in the room?

A No, I went out at that point.

Q Mr. Davis, have you ever driven truck 244?

A Yes, I did.

Q When did you drive it?

A June 9.

Q Of what year?

A Of '78.

Q What, if anything, happened on June 9, 1978?

A I had an accident with it.

Q Why don't you describe that accident to us.

A It was a defect in the brakes then. I was put on what they call a wood box trailer there and it didn't have proper

brakes on it, so I was driving along in the the traffic, a truck stopped in front of me and I hit him on the right rear corner.

Q And this was truck number 244?

A That was truck number 244.

MS. ENGEL: I have no further questions.

* * * *

[103]FRANK HAMILTON,
a witness called by and on behalf of the General Counsel,
being first duly sworn, was examined and testified as
follows:

* * * *

DIRECT EXAMINATION

BY MS. ENGEL:

Q Mr. Hamilton, will you please state your full name and address for the record?

A My address is 48699 Wear Road, Belleville, Michigan.

MR. LEIB: I didn't hear.

JUDGE WAGMAN: Wear Road? You have to speak up.

MR. LEIB: What city is that? Belleville?

A Which would be Sumpter Township.

[104] Q What is your first name, sir?

A Frank Hamilton.

Q Mr. Hamilton, are you employed?

A Yes.

Q Where are you employed?

A City Disposal.

Q Where is that located?

A 1550 Harper.

Q In the city of Detroit?

A Yes.

Q What is your job there?

A Truck driver.

Q And who is your immediate supervisor there?

A Bob Madary.

Q Does anyone else supervise you?

A And Otto.

Q What is Otto's last name?

A I can't think of it right now. Jasmund.

Q When did you start working at City Disposal?

A It was off and on ever since '77.

Q Were you working there in May of 1979?

A Yes.

Q During May of 1979, were you assigned to drive a particular truck?

A Yes.

[105] Q What truck was that?

A 244.

Q Can you describe the condition of truck 244 in May of 1979?

A Well, the truck run all right but I didn't have too good of brakes.

Q Did you ever have problems with brakes?

A Yes.

Q How often did you have problems with the brakes?

A Well, they had a computer valve or something like that on there and you'd have to test them all the time. And then sometimes when you put your foot on the brakes, you had nothing. Then again, you put your foot on the brakes, you had pretty fair brakes.

Q Mr. Hamilton did you ever have any accidents in truck number 244?

A Yes.

Q How many?

A Two.

Q Do you recall when these accidents occurred?

A I can't remember the dates.

Q Were they prior to May of 1979? Before May of 1979?

A They were before, yes.

Q What happened in the first accident you had in truck 244?

[106] MR. LEIB: Can I have a date, please?

JUDGE WAGMAN: The first thing is, can you give us any more information about the date or roughly around the date or something as to the timing of it in relation to May of 1979? Six months, four months, two years, a year.

A Before the accident?

JUDGE WAGMAN: Well, in relation to May 14, 1979. This first accident occurred when?

A Well, I really don't know, but I think it was in the fall of the year.

JUDGE WAGMAN: Of what year?

Q Of 1978?

A I would say yes, '78.

Q And what happened in that accident?

A I was coming down the expressway and I was traveling around 45, 50, seeing all the traffic was slowing down.

Q What expressway were you on?

MR. LEIB: Your Honor, may I have—

A Interstate 94.

* * *

[107] A I was coming down Interstate 94 and I was on about a—well, I was about a half a mile from Trumbull and there was a car, a limousine, kept traveling beside me and he'd keep cutting in front of me and cutting out. And then I looked up and I see another car had stopped. There was about four cars stopped. And I said, well, I've got plenty of distance, so I applied my foot on the brakes lightly to check it and this limousine cut right back in front of me again, so that shortened my distance. And when I done that, I looked and the trailer was sliding and the tractor kept going and I just slid right on into the limousine.

[108] Q So what was the problem with the truck when it hit the limousine?

A Well, the brakes on the tractor wasn't helping me at all.

Q Now, you said there were two accidents. Can you, first of all, describe to pinpoint a little better when the date of the second accident was?

A And that occurred in the spring of the year, I would say about two months later.

Q After the first one.

A After the first one. And I was coming up on 94, getting ready to go to the exit I was going to right at 75. And I was coming up in there and I seen the truck when it came up on 94, so naturally I was running kind of slow and I even had to shift the gear and I looked in the mirror to

see if anybody was coming up on the side of me, I had my signal light on, and this—I got my eyes back on the road—this truck had stopped. And when it stopped, I hit my brakes, I didn't have no place to go because this other guy was on the side of me, and I went to put my foot on the brakes and I slid right into the truck.

JUDGE WAGMAN: What?

A I slid into the truck.

Q Mr. Hamilton, on either of these two occasions, did you fill out an accident report?

A Yes, I did.

[109] Q Could you describe what you filled out that you're calling the accident report?

A Well, it was about the brakes on the truck. I know about that.

Q Who did you give this accident report to?

A One of them was turned in to the Detroit police and the State Police have the other one.

Q Did you fill out any kind of accident report for the company?

A I think I did. I don't know exactly.

JUDGE WAGMAN: Does the company have an accident report form?

A Yes.

JUDGE WAGMAN: How long have they had it?

A Oh, I imagine ever since I've been there.

JUDGE WAGMAN: What does it say on the piece of paper?

A Well, you have to give your name and address and describing everything.

JUDGE WAGMAN: Have you ever filled one out?

A Yes, I have. I think I have.

JUDGE WAGMAN: When was the last time you filled one out?

A That I couldn't say.

JUDGE WAGMAN: Who did you give it to?

A Well, I'd have to turn it in to my supervisor.

[110] JUDGE WAGMAN: Who was?

A Otto Jasmund.

Q Mr. Hamilton, turning your attention to Saturday, May 12, 1979, were you at work that day?

A Yes, I was.

Q What truck were you driving?

A 244.

Q Where did you drive truck 244 that day?

A To the land fill.

Q How many times did you go out to the land fill that day?

A I think, five times.

Q How were the brakes that day on 244?

A Oh, the same as usual. You know, you have brakes and then you don't have them. And you had to be careful with it.

Q Did you have any problems with the brakes that day?

A No, not until, let's see, the fourth load.

Q What happened on the fourth load?

A I like to hit James Brown.

Q Would you describe what happened for us, please?

A Well, we was both going over to the land fill together and he was just ahead of me. He made a turn and then started backing up to dump. I was coming in. My front end slid over and I jammed my foot on the brakes to stop the truck, and if he hadn't been looking at me, I would have hit him.

Q Did your brakes work that day?

[111] A No.

Q What did you do after that incident with Mr. Brown?

A I brought the truck back to the relay.

Q What do you mean by the relay? What address is that?

A 1550 Harper.

Q What did you do once you reached 1550 Harper?

A Took the truck to the back and parked it.

Q Did you speak to anyone at that time?

A Yes, I did.

Q Who did you talk to?

A I talked to Frances Castelono.

Q Anyone else?

A Let's see, who else was there. Dave Ammerman.

Q And where were you?

A In the driver's room.

Q Was anyone else there?

A There were some fellows standing there, yes.

Q Who were they?

A And Brown was there, and I don't know whether Davis—there was three or four drivers in there.

Q What was said at that time and by whom?

A Well, I asked Frances would he check or fix the brakes on 244.

Q When you say Frances, you mean Mr. Castelono?

A Yes, Mr. Castelono. And he says, "Leave it out the [112] back and we'll get it on the weekend." I said, "Okay."

Q Did Mr. Ammerman say anything?

A And Mr. Ammerman said, "Yes, we'll take care of it. We'll take care of it." That's all.

Q Mr. Hamilton, how often often did you complain about 244's brakes.

A All the time.

Q To your knowledge, did the company fix the brakes whenever you complained about them?

A Yes, the brakes was adjusted but they wouldn't last. It just seemed like everything went off and on. You'd be driving, especially on a moist day, you'd be driving and you have to apply your brake, no brakes. It was only on the tractor, it didn't have the trailer adjusted up right and if the trailer would catch and hold right, a person could manage. But when you find out the trailer didn't catch ahold, you had to take it easy.

Q Now, Mr. Hamilton, if something goes wrong with your truck, what is the procedure that you're supposed to follow at work?

A Well, if something was wrong with it, you'd have to bring it in and let them fix it. Then I have to go without a truck.

Q Who would you report it to?

A The supervisor.

Q Would you do anything else? Would you write anything out?

[113] A Well, we had a bulletin board there. We could put it on the bulletin board.

Q And what would you put on the bulletin board?

A That I didn't have any brakes.

Q Would you write that out—

A Yes, on a piece of paper.

Q What would you write on?

A The tractor wouldn't have any brakes.

Q Would you write it on a piece of paper?

A Yes.

Q Any special kind of piece of paper?

A Oh, yes, there's some little square sheets there we can write them on.

Q And where was this bulletin board located?

A It would be on the wall on the right-hand side of the driver's room.

Q Did you ever put up one of those little sheets of paper on the bulletin board?

A I most generally told somebody about it.

Q But did you ever put up a little piece of paper?

A About once or twice.

Q And what truck did you talk about on that?

A 244.

* * * *

[125]

CROSS-EXAMINATION

Q Mr. Hamilton, I show you Respondent's proposed Exhibit No. R-7 and ask you if your name appears thereon?

A (No response)

Q Does your name appear thereon, Mr. Hamilton?

A No.

Q It doesn't appear thereon? Isn't this your name, F. Hamilton, there?

A Right. Right.

Q Okay.

A Yes.

Q Truck 244?

A Yes.

Q And is it not true that on May 15, 1979 you drove—made seven trips that date?

A Possible, yes.

Q You recognize this document, don't you?

A Yes, I do.

[126] Q And this document says seven trips were made.

A Yes.

* * * *

[127] Q Mr. Hamilton, this is a daily packer report on May 16, 1979. Does your name appear thereon?

A Yes.

Q Your name appears on May 16, 1979 one, two, three, four—

MS. ENGEL: Your Honor, I believe the document speaks for itself.

JUDGE WAGMAN: Well, I think he's going to help him but I need it myself.

Q Six times, is that not true, Mr. Hamilton?

A It's there six times.

Q And so you made six trips on truck 244 on May 16 to the dump, right? Isn't that correct?

A Right. It's on that document.

* * * *

[140]

REDIRECT EXAMINATION

BY MS. ENGEL:

Q Mr. Hamilton, turning your attention back to May 12, 1979, after—when you were out at the land fill, and this was your fourth trip out there, did you have any conversation with Mr. Brown?

A Yes, I like to hit him.

Q I beg your pardon?

A I like to hit him.

MR. LEIB: It's been asked and answered.

[141] JUDGE WAGMAN: No, that's a different question.

Q When you say you like to hit him, you mean you almost hit him in the truck?

A Yes.

Q Okay, after that incident, did you have any discussion with him about it.

A No. Me and him started talking, and I said, "I got to take this thing back and get it fixed because right here on the land fill when I was making a turn the truck slid," and if he didn't look, wasn't looking out his mirror and I'm trying to get away from him, he stopped and I just run right on up to him and I—

JUDGE WAGMAN: We already had that.

MS. ENGEL: I know, but I'm trying to get out, was there any conversation.

JUDGE WAGMAN: Did you say anything?

A No, other than about the truck, and I said, "When I get back I'm going to take it in and get it fixed."

MR. LEIB: I'll move to strike, your Honor.

JUDGE WAGMAN: Why do you want to strike it?

Q Who did you say that to?

A I talked to Frances Castelono about it.

Q I know that, but while you were—we're not taking about being back at the garage. We're talking about at the land fill after you almost had this incident with the truck, [142] did you speak to anyone about it?

A Other than Mr. Brown, there was nobody else. There was me and him.

Q Did you speak to Mr. Brown at that time?

A About the truck?

Q Yes.

A Yes.

Q Okay. What was said at that time?

JUDGE WAGMAN: What did you say to him?

A I just said, "Look, Brown, I almost hit you. Looks like I don't got a sign of brakes on this truck, and especially here in the land fill pulling up here like this." And he said, "I kept seeing you come back and coming up into me." So when I got it stopped, that's what I told him. I said, "I'm going to have to carry it back and get it fixed."

* * * *

[164]

CONTENTS

<i>Witness</i>	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
John Calandra	166	178	—	—
James Brown	—	—	191	180
	—	—	198	192
David Ammerman	215	—	—	—
John Willie Tyner	226	236	240	244
	—	—	246	—
David Ammerman (recalled)	248	258	265	266
Anthony Soava	269	273	286	—
Robert Jennings	290	292	293	—
Otto C. Jasmund	294	—	—	—

<i>Exhibits</i>	<i>For Identification</i>	<i>In Evidence</i>
Respondent's	—	225
R-9(a) through 9(b)		
R-10	171	178
R-11	196	196
R-11	196	196
R-12	233	235
R-13	302	303
R-14(a) through 14(x)	315	315
R-15	317	324
General Counsel's		
GC-3	200	202
GC-4	213	214
GC-5	213	214

* * * *

[166]

JOHN CALANDRA

a witness called by and on behalf of the Respondent, after being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. LEIB:

Q Mr. Calandra, where are you employed?

A Teamster Local 247. I am recording secretary.

Q What are your duties, Mr. Calandra?

A I beg your pardon?

Q What are your duties?

A Well, my duties is to take care of all the grievances at my companies. I've got a lot of companies on the east side. Whenever a guy has a problem with one of my companies I try to resolve the grievances. Plus, I do a lot of other things too.

Q All right. Is one of the companies that you handle City Disposal Systems, Inc.?

[167] A Yes, it is, sir.

Q And, there is a contract, is there not, with City Disposal?

A Yes.

Q That was entered into on November 1, 1977?

A Yes, sir.

Q That is Exhibit Number—

MS. ENGEL: General Counsel's 2.

Q That is General Counsel's 2. Now, Mr. Calandra, do you know Mr. James Brown?

A Yes.

Q An employee of City Disposal Systems, Inc.

A Yes, sir.

* * * *

[178]

CROSS-EXAMINATION

BY MS. ENGEL:

Q Mr. Calandra, on the day that James Brown was discharged you were informed of the discharge, weren't you?

A Yes.

Q And, you spoke to Mr. Brown that day, didn't you?

A Yes. He came to the office.

Q Now, you and Mr. Brown went down to City Disposal that day, didn't you?

A Yes.

Q And, you met with Mr. Jasmund, didn't you?

A Yes.

Q And, Mr. Madary was there also, wasn't he?

A Yes.

Q You asked Mr. Jasmund and Mr. Madary to take James Brown back to work, didn't you?

A Yes.

Q And, they refused, didn't they?

A Yes.

* * * *

[180]

JAMES BROWN,

was recalled to the witness stand and was examined and testified as follows:

CROSS-EXAMINATION

BY MR. LEIB:

Q Mr. Brown, you received a copy of this voluntary quit, did you not? Which is identified as R-10?

MS. ENGEL: Excuse me, your Honor, before Mr. Leib continues; could you please show me what you are asking about, Mr. Leib?

MR. LEIB: Yes.

MS. ENGEL: Okay. R-10.

JUDGE WAGMAN: Do you have a copy of it?

MS. ENGEL: I have a copy of it right here.

Q (By Mr. Leib): You received this, did you not?

[181] A Yes, I did.

Q That's the first page of this document, correct? Is it not—

JUDGE WAGMAN: You didn't even answer. Is it correct that it's the first page of the document?

THE WITNESS: Yes, it is.

* * * *

[191]

REDIRECT EXAMINATION

BY MS. ENGEL:

Q Mr. Brown, I am going to show you the first page of Respondent's 10. When did you receive that?

A May the 14th.

Q What time of day did you receive it?

A Around 1:00 o'clock P.M.

Q Who was present when you got that?

A George—I mean, John Calandra, Otto Jasmund, and Bob Madary and myself.

* * * *

[215]

DAVID AMMERMAN,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. LEIB:

Q Mr. Ammerman, where are you employed?

A City Sand and Land Fill.

Q And, what is your occupation?

A Mechanic.

* * * *

[216] Q (By Mr. Leib): Mr. Ammerman, will you tell the Court what your duties are and where you perform those duties as a mechanic?

A Right now I am working at City Sand and Land Fill.

Q Okay. Do you recall the date of May the 14th, 1979?

A Yes, I do.

Q And, on that date were you employed?

A I was employed by City Sand and Land Fill, but I was working in the garage of City Disposal at 1550 Harper.

Q City Sand and Land Fill and City Disposal are owned by the same individual, is that correct?

A Yes.

Q And, they work out of the same office?

A Right.

Q And, so, your place of employment was at 1550 Harper, Detroit, Michigan, isn't that correct?

A Then, yes.

Q All right. Will you tell the Court what your duties were pertaining to making necessary repairs, changing parts, et cetera, having to do with various trucks at 1550 Harper Avenue, Detroit, Michigan?

A I repaired the trucks as they needed it.

Q What type of trucks are these?

A Semis, tandem tractors and trailers. At the time, they [217] were Mack trucks.

Q All right. Now, Mr. Ammerman, on May the 14, 1979, will you tell this Court how many mechanics worked in the garage along with yourself?

A We had two other mechanics working at the time.

Q Will you tell this Court whether you had any authority to hire or fire?

A No.

Q Will you state whether or not you had any authority to direct an individual driver to go home?

A No authority.

Q Do you recall the date of May the 14th, 1979, at approximately 7:30 to 8:00 A.M.

A Yes.

Q On that date, will you tell the Court whether or not Mr. James Brown, if you know, was assigned to drive truck 245?

A Yes, he was.

Q And, were you familiar with the condition of truck 245 on that date?

A Not until he stopped at the garage that morning and told me he was having a problem with the brakes.

Q And, that was approximately what time?

A I would say 7:00, 7:30, somewhere. It was early, his first run.

[218] Q Did you have a conversation with him at that time?

A Yes, I did.

Q What did you tell him and what did he say to you?

A I told him, I said, "The garage is full. I've got trucks backed up. I'm not gone be able to get to it today. The truck is gonna be down. So, you might as well go home or see Otto and see if there's another truck."

Q What, if anything, did he say to you?

A I don't remember him saying anything to me. He went out of the garage area.

Q And, at that time did you have any further conversation with him concerning truck 244 or truck 245?

A No.

Q Are you familiar with the policy of the company with reference to drivers performing work on other than their assigned truck? If it is down for any particular reason?

A Yes. If there's a spare truck, a driver usually will take the other truck.

Q With reference to driving any other truck, on May the 14th, 1979, will you tell this Court who the two supervisors were concerning disposition and driving of various trucks to the land fill?

A Mr. Otto Jasmund and Mr. Madary.

Q Did you have any authority to authorize a driver to drive to any particular place?

[219] A No.

Q Now, at that time when you had your conversation with Mr. Brown, will you state whether or not you advised him to see Mr. Otto Jasmund?

MS. ENGEL: Objection, your Honor.

JUDGE WAGMAN: What?

MS. ENGEL: Mr. Leib is starting to lead his witness.

JUDGE WAGMAN: No. He just said whether or not.

MS. ENGEL: Okay. I will strike my objection.

A Yes, I did.

Q Now, precisely what did you tell him?

A I told him that his truck would be down, he could go home or see Otto as there might be another truck.

Q Do you know whether or not Mr. Brown went to see Mr. Jasmund?

A No, I don't.

Q With reference to breakdown of trucks during the time of your employment, will you state whether or not, or

how frequently trucks are required to be repaired in order to keep the fleet running? And, what the policy is with reference thereto?

A You mean how often a driver has to change a truck or what?

Q Well, whatever is required to keep a truck in good repair. What necessarily do you do in order to keep a truck [220] in good repair and running?

A We have to bring it in and repair it. And, in the meantime the driver either takes another truck or he's off.

Q Now, to your knowledge, Mr. Ammerman, do you know of any instance where the company has required a driver to drive and operate a tractor and trailer that was not in good operating condition?

A No.

Q Do you know of any instance where they have told a driver to drive a truck that was defective?

A No.

Q Now, assume, Mr. Ammerman, that a truck breaks down, as in this particular instance. What would be the policy with regard to any other truck being available?

A The driver would take another truck if there was another truck available.

Q How often is that done?

A All the time. Two or three times a week. Three or four times a week.

Q Whenever the truck is in for repairs he will be assigned another truck?

A If there is one available, right.

Q Mr. Ammerman, when, trucks are brought into the garage, are the chassis examined?

A Yes, sir.

[221] Q Is the transmission examined?

A Yes.

Q Is the differential examined?

A Yes.

Q Are the oil filters replaced, if required?

A On a certain period of basis, yes.

Q Are the wheel bearings taken care of if required?

A If required, the front ones you can see, yes.

Q And, what about the universal joints?

A They are greased and checked.

Q And, the air cleaner?

A Usually changed.

Q What about the shock absorbers?

A Some of 'em have 'em and some don't. If they have 'em, they're checked.

Q And, the springs?

A Visual check, right.

Q What about your tune-ups?

A As needed.

Q Tires?

A That's usually checked. We have a separate department for tires.

Q What about the brakes?

A The brakes, if they need adjusting, the trucks are brought in and the brakes are adjusted.

[222] Q What about the wheel balancing?

A That we send out.

Q And, what about the steering? Or, engine repair or chassis?

A Most of our steering we send out to have done. The engine repair we do ourself.

Q What about the differential?

A That's checked.

Q And, how about the cooling system?

A That's checked.

Q And, the exhaust system?

A That's checked.

Q Batteries?

A If needed. Usually not unless you have a problem, you look at the batteries.

Q These are part of the daily work on the part of the garage mechanics, is that correct?

A That wouldn't be daily on every truck.

Q I understand, but, these are the things that are performed?

A Right.

Q You perform repairs as well, if a car or a truck is involved in an accident? You make necessary repair there as well?

A If it's a small one.

* * * *

[293]

OTTO C. JASMUND,

a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

* * * *

[294]

DIRECT EXAMINATION

By Mr. Leib:

Q Mr. Jasmund, where are you employed?

A City Disposal.

Q And, how long have you been employed by City Disposal?

A Approximately about two and a half years.

Q What is your position with City Disposal?

A Supervisor.

Q What are your duties as a supervisor?

A Scheduling truck drivers and oversee the garage.

Q How many trucks, bulldozers and loaders does City Disposal have? Just give an approximation.

A At that time or now?

Q Then or now.

A Approximately 25 or 30 pieces of equipment.

Q Specifically, what does City Disposal do?

A They handle the City of Detroit's rubbish. It is a relay dumping point.

Q And, that dumping point is located where?

A 1550 Harper.

Q Explain to the Court in your own words if the City of Detroit has—let's say they have the rubbish trucks that [295] pick up the rubbish—what do they do with that rubbish?

A The City of Detroit or us?

Q No, the City of Detroit?

A They simply bring it to our relay and dump it and leave.

Q And, when they leave what do your truck drivers do?

A They relay it out to our land fill in Belleville, Michigan.

Q What do they do with it there?

A Dump it in the land fill, leave, and come back for another trip.

Q All right. Now, will you tell the Court whether or not in 1979, specifically in May or thereabouts or before May, whatever it may be, whether or not City Disposal had a garage located on the site of 1550 Harper, is that it?

A That is correct. They did.

Q All right. And, how many mechanics were located in that garage?

A At times two to four.

Q What is the function of the mechanics in relationship to the work required in that garage?

A They simply repair and service a simple maintenance program, other than a major tragedy.

Q Will you tell the Court approximately how many trucks would come in every day for checking, greasing, et cetera?

[296] A Approximately, at that time, service duties were from two to three.

Q Okay. What is a bulldozer?

A It's a crawler type machine.

Q And, what is its purpose?

A To push rubbish into the building and compact it.

Q And, what is an end loader?

A An end loader is a rubber tire loader with an eight yard bucket on it which loads our open top trucks and also pushes rubbish into the building.

Q Now, your employees in the month of May, okay?

A Yes.

Q You had truck drivers, right?

A Right.

Q Would they drive a tractor?

A Tractor-trailer, correct. Right.

Q Now, will you tell the Court whether or not drivers were assigned to a specific truck?

A Yes, they were.

Q And, tractor and trailer?

A They certainly were.

Q Will you tell the Court whether or not James Brown was assigned a specific truck and trailer, or tractor and trailer?

A Yes, he was.

[297] Q Do you recall the date of May 14, 1979?

A I certainly do.

Q And, on that date will you tell the Court whether or not James Brown was an employee of City Disposal Systems, Inc.

A He was.

Q Will you tell the Court whether or not on May 14, 1979, James Brown was assigned to operate a specific truck?

A He was.

Q What was that truck number?

A 245.

Q Will you tell the Court whether or not on May 14, 1979, whether or not James Brown worked that day?

A He worked that morning.

Q What time, if you know, did he report for work?

A The starting time was around 5:00.

Q In the morning?

A Five, 5:30 the guys left.

Q All right. Will you tell the Court whether or not Mr. Brown returned to the City Disposal Systems, Inc. plant located at 1550 Harper on that date, at any particular time?

A He returned at approximately 7:30, 8:00 o'clock.

Q That's A.M. or P.M.?

A Right, A.M.

Q On that date and time, will you state whether or [298] not you had a conversation with Mr. Brown?

A I did.

Q Will you tell the Court in your own words what was said by Mr. Brown, what you said to him?

A Exact words?

Q Whatever was said. I only ask you to tell the truth, nothing else.

A I'll elaborate. Yes.

Q Go ahead.

A Okay. I came out of my office and Mr. Brown was standing out there. He said he had something wrong with his truck. So, we came to an agreement there was something wrong with his truck, 245.

Q Okay. Go ahead.

A Okay. I told him to take out 244. He refused to take out 244. Told me that Frank Hamilton was coming. As a matter of fact, he knew he was coming. I says to him, "How do you know he's coming in. He never called me. No one else has told me about it." I says, "If any driver is supposed to be on the property they are supposed to notify me." And, that was it. He refused to drive the truck the first time. I asked him for the second time. I said, "Brown, take out the truck." We had garbage all over the place. That was the second time I told him to take the truck out. At that time my co-worker, Mr. Madary, the other supervisor, came out of [299] the back door. It's a raised up back door. We kind of arguing a little bit back and forth. He told Brown, he said, "Take the truck and go on to the land fill." And, Brown, no, he didn't want to take it. He left the property.

Wait a minute. I'll retract that. He punched out before Mr. Madary asked him to take the truck. I'll retract that statement. After the second time I asked him to take the truck. He was in a rage. I was in a rage. he grabbed his timecard. It was right behind him, as close as this wall is to me. He grabbed it out and punched out, and he said, "Hell no, I ain't taking the truck out." And, he left. He left the property on his own accord.

Q Mr. Jasmund, at that time was anything said with regard to truck 244 about defectiveness or otherwise or anything pertaining to truck 244?

A No. We was arguing about Hamilton.

* * * *

[300] Q Were you familiar, Mr. Jasmund with the condition of truck 244?

A Yes, I am.

JUDGE WAGMAN: Were you?

THE WITNESS: Yes.

Q (By Mr. Leib): On May the 14th were you familiar with it?

A Certainly was.

Q Will you tell the Court in your own words what the condition of that truck was as you recollect?

A It was in good shape. It was running fine as far as I'm concerned.

Q All right. On that date and time did the name of Frank Hamilton come up in your conversation?

A Certainly did.

Q What, if anything, did Mr. Brown say in relation thereto?

A Mr. Hamilton?

Q Yes.

A He told me that he knew he was coming to work, that's the reason he didn't want to take his truck. And, I told him he didn't have no business telling me if he knew or not. I [301] don't want to go into our whole argument. I told him simply to drive the truck.

Q As a result of Mr. Brown refusing to drive—

A Yes.

Q Will you tell the Court what, if anything, you did in relation to having anyone else drive truck 244?

A At that time?

Q Yes.

A Nothing at the moment.

Q All right. What did you do subsequently?

A Later on, oh, I'd say maybe 9:00 o'clock, 8:30, 9:00, it might have been 9:00 o'clock, quarter after—

Q What did you do?

A I called John Tyner.

Q Okay. All right. And, who was John Tyner?

A The man that was up on the stand here a little while ago.

Q Okay. What did you have him do?

A I assigned him to truck 244.

Q All right. What, if anything, did he do?

MS. ENGEL: Objection, your Honor.

JUDGE WAGMAN: What?

MS. ENGEL: It's the same one I've been raising all along as to relevance.

JUDGE WAGMAN: No. I want to finish the whole scene. [302] Overruled. Go ahead. What did he do?

THE WITNESS: He came in. Normal procedure. Punched in, filled out his trip sheet, went to the truck, checked it out; checked the water, the oil, whatever had to be checked. It was already loaded. I think at that time he had a tarp on there, he tarped it off and went to the land fill. Came back, the same thing, went to the land fill a second time. Came back, the same thing, went to the land fill a third time. And, never reported any breakdowns, any failures to me.

Q (By Mr. Leib): Now, how far is this land fill from 1550 Harper?

A Approximately 37 miles.

Q And, how many roundtrips did he make?

A Three.

* * * *

[303] Q (By Mr. Leib): Mr. Jasmund, following that notice of voluntary quit, will you tell the Court whether or not a grievance was filed by Mr. Brown?

MS. ENGEL: Objection.

JUDGE WAGMAN: What is that?

MS. ENGEL: Relevance. I know it is the same one as before.

JUDGE WAGMAN: You are overruled. You have a continuing objection. Ask him about that.

[304] Q (By Mr. Leib): Was a grievance filed by Mr. Brown?

A Yes.

Q And, were you served—tell the Court whether or not you were served with a copy of that grievance?

A Personally?

Q No. Did the Company receive it.

A The Company received it in the mail.

Q All right. And, following that grievance report, will you tell the Court whether or not there was any communication with Local Union Number 247 concerning that grievance?

A John Calandra contacted myself.

Q And, who is John Calandra?

A The fellow that was on the witness stand earlier.

Q One of the business agents for 247?

A James Brown's business agent.

Q Okay. Tell the Court in your own words what happened, what your position was, what their position was, what the final outcome was.

A I'll tell you what happened at our meeting. But, I can't tell you what happened at the union. Of course, I don't know.

Q All right.

A They brought it to our attention. They brought it down and we had a meeting on it. I talked to John Calandra, [305] about it, and he said that—this is his words, "James Brown left the property voluntarily, without me telling him anything, any accord like that was an automatic voluntary quit."

* * * *

[331] [April 17, 1980 session]

CONTENTS

<i>Witnesses</i>	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Otto C. Jasmund (resumed)	332	333	342	345
Robert Mandary	347	354	359	361
			363	
Keith W. Hall	365	382	—	—
<i>Exhibits</i>		<i>For Identification</i>		<i>In Evidence</i>
General counsel's 6		339		341

[332] OTTO C. JASMUND

having been previously duly sworn on behalf of the respondent, resumed the stand, was examined and testified further as follows:

JUDGE WAGMAN: Mr. Leib[b], do you have any other questions?

MR. LEIB: Just a few.

DIRECT EXAMINATION, Cont'd

* * * *

Q (By Mr. Leib) Concerning the date of May 14, 1979, you stated that Mr. Brown punched out.

[332] A Yes.

Q And left. Now at that time where was truck 244?

A It was parked in the yard alongside of the garage.

Q How far away is that from the office where he punched out?

A It is not that far. About—

Q How far is not that far?

A A hundred fifty yard, maybe. A hundred yard.

Q That's the normal place where the truck was parked?

A Thereabouts.

[333] Q Will you state whether or not prior to the incident in question, you instructed Mr. Brown to take out truck 244, and will you tell the court in your own words whether or not at any time Mr. brown ever went to truck number 244?

MISS ENGEL: Objection, your Honor.

Q (By Mr. Leib) What, if anything, did he do?

A I never saw him go near the truck.

MR. LEIB: No further questions.

JUDGE WAGMAN: Okay. Cross examine.

CROSS EXAMINATION

Q (By Miss Engel) Mr. Jasmund, I believe you stated in your direct testimony that drivers are paid in two ways at City Disposal, is that correct?

A That's correct.

Q You said they are paid either hourly or by some form of incentive pay, by the load, is that correct?

A Yes, it makes the guys want to work more.

Q Mr. Brown was paid by incentive pay, wasn't he?

A Yes, he was.

Q That was his choice, wasn't it?

A Yes, it was.

Q As a matter of fact, didn't Mr. Brown make more money than most of the other drivers?

A I couldn't say that for sure.

Q You never saw the pay check for the drivers?

[334] A Yes, I did.

Q Did you approve their hours?

A I did.

Q So you must have some idea how much he made as compared to others?

A Some idea, yes.

Q And didn't Brown make more than most of the other drivers?

A At times.

Q Now other drivers, not all the drivers chose incentive pay, did they?

A State that again?

Q Not all the drivers chose incentive pay, to work by incentive pay, did they?

A No, they didn't.

Q Just some?

A That's right.

Q And Mr. Brown was one of those?

A That's correct.

Q Now didn't the drivers on incentive pay like to pull more loads because they made more money?

A No.

Q Well, what was the point in having incentive pay then?

A The point of it, some drivers prefer to only pull as many loads as they wanted to. It wasn't just to make more money. It was up to the individual.

[335] Q Okay, but isn't the basic purpose of incentive pay to give incentive to earn more money and pull more loads?

A That's the purpose of it, right.

Q Now if a driver punched out and went home, he wouldn't get paid for the time he was off, would he?

A From the time he left the property?

Q Yes.

A How could he?

JUDGE WAGMAN: The answer is yes or no.

THE WITNESS: Well, sir, yes.

Q (By Miss Engel) Once he punches out—let's say you are a driver and you punch out, you do not make any money that day, is that correct?

A That's right.

Q Tell me if Mr. Brown refused to drive and punched out, he wouldn't make any money that day, would he?

A He got paid for the load he pulled.

Q Yes, but after he punched out, say eight in the morning or eight thirty?

A No, not paid. It is possible he could be—he wouldn't make anything.

* * * *

[346]

JUDGE WAGMAN: What is the requirement for a driver to check out, have a pre-drive check out in the morning with re[s]pect to brakes?

THE WITNESS: To check his brakes.

JUDGE WAGMAN: Would the driver determine the safety of the brakes?

THE WITNESS: Yes. Okay. You want me to explain it?

JUDGE WAGMAN: Sure. That's what I am asking.

THE WITNESS: He would go to his truck and give it an oil check, and he will get in his truck and before he is out of the yard he will have to touch the brakes a couple of times and when he comes to the end of the yard to enter into the street, he almost has to stop completely because there is a down hill there, and if he hasn't any brakes, he is going to know it right away. It is as simple as that. Just like driving your car. You come to the back of your driveway you apply the brakes to stop and look, and you know if you have got brakes or not.

JUDGE WAGMAN: What did Mr. Brown do in that regard on [347] May 14th?

THE WITNESS: He was never in the truck.

* * * *

ROBERT MADARY

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Leib) Your name is Robert Madary?

A Right.

Q Where are you employed, Mr. MaDary?

A City Disposal Systems.

Q And in what capacity are you employed?

[348] A Supervision.

Q How long have you been so employed?

A Mr. Sove bought it in 1975.

Q Have you been employed since 1975?

A Since 1975.

Q In a supervisory position?

A No, sir.

Q when did you become a supervisor, to the best of your recollection?

A The latter part of '77.

Q What were your duties as a supervisor and what are your hours of employment?

A As supervisor?

Q Yes.

A From seven in the morning until seven at night.

Q What are your duties?

A To work with Mr. Jasmund.

Q What do you do?

A Dispatch drivers, check on the garage, check on the garbage.

Q Mr. Madary, do you recall the date of May 14, 1979?

A I do.

Q Will you tell the court whether or not you were on the premises of City Disposal Company on that date?

A I was.

[349] Q Do you recall whether or not there was a conversation overheard by you between Otto Jasmund and Mr.

James Brown on May 14, 1979, at approximately between seven and eight o'clock in the morning?

A I did.

Q Tell the court, in your own words, what, if anything, you observed, what you heard and what took place between Mr. Brown and Mr. Jasmund?

A I was sitting in the back office, right off the driver's room, Otto and Mr. Brown was in a heated argument over the trucks. This 245 wasn't working right and they took 245 back in the garage evidently, from what I could hear from the argument. There was a discussion. He wanted—they were discussing his truck. Mr. Jasmund asked him to drive this 245 and they were still in a heated argument, and I am standing on the plateau out there. By that time I am standing up on the steps over there, and Mr. Jasmund asked Mr. Brown to drive truck 244. Mr. Brown stated that Mr. Hamilton was coming in and they were still arguing this and that, and, you know, this and that, and I am going home. You know what I mean? At that time during that argument sometime or another he punched his card after he talked to Otto and after he punched his card, I went over, knowing Mr. Brown, and asked him why don't you go drive 244 today, we have got a lot of garbage and he said I am [350] it.[sic] Mr. Brown proceeded to go home.

Q At that time, Mr. Madary, will you tell the court whether or not Mr. Brown went over to truck 244 and examined truck 244?

A As far as I know, Mr. Brown left the property.

JUDGE WAGMAN: Wait a minute. I am interested in getting the answer. Are you happy with that answer? You asked him did he go and take a look at 244, and he said he left the property. He left the property. Did he go to 244 to look at it before the [sic] left the property?

THE WITNESS: 244 sits away back in the yard. Our office is away up in the front. We have right around seven acres. Mr. Brown walked out the front of the yard. To my knowledge, Mr. Brown did not go back and look at the truck unless he went down the railroad track and came back in there and looked at 244.

JUDGE WAGMAN: That's all I wanted to know.

* * * *

[351] Q (By Mr. Leib) Tell the court in your own words, what did you do?

A When they got in this heated argument, I was standing [352] on this plateau, and they were still in this heated argument. Mr. Jasmund asked Mr. Brown to drive 244. Mr. Brown stated Hamilton was coming to work that day and they were still in an argument and Otto asked him, and he said I am not driving it, and he punched that card out. You know what I mean. After he punched the card out, I asked Mr. Brown go drive the truck and he says he is not driving it. He was going home.

Q And that was it?

A It was just that simple.

Q Mr. Madary, are you familiar with the incentive system, how it works?

A I certainly am.

Q Explain it for the court.

A The incentive system works with the drivers like this. They haul by the load or by the hour, but they take whichever is greater, because we have to pay, you know what I mean. If a driver goes down while he is hauling incentive pay, he gets down time. With his load incentive, sometimes he makes incentive because we have got a run, you know what I mean, but he always gets what is the greatest. The reason we do this, an employee has to work eight hours a day, according to our union contract, and an incentive driver can come and do this in six and a half hours and get paid for eight and a half hours and he can be home two hours [353] and still be getting paid by City Disposal. The incentive pay goes—I don't know the rate right to the penny but I do know the incentive now is twenty two, twenty two, twenty two, twenty six, twenty eight, because he gets into time and a half after the first load, and the reason the guys like incentive pay, we let them run a few extra loads, but they do get whatever is the greatest. If a guy comes and hauls one load, you know what I mean, and an incentive driver, Mr. Brown had chosen to stay on the other part of that day, City Disposal had no alternative but to pay him his six hours pay. If he had not refused to stay,

Mr. Jasmund would have found something for Mr. Brown to do on that property, according to our contract.

JUDGE WAGMAN: If he hadn't punched out?

THE WITNESS: If he hadn't punched out that day, he would have got paid. If he drove 244 or whatever truck it would have been, Mr. Brown would have got paid, and Mr. Brown has enough intelligence to know that.

JUDGE WAGMAN: Anything further?

Q (By Mr. Leib) Would you tell the court, Mr. Madary, whether or not there was a distinction between truck 245, which was assigned to Mr. Brown, and the other trucks?

A Mr. Brown basically drove truck 245. Drivers feel when they get into a truck, that is their truck, naturally, and at times it will run along and everything will be going [354] smooth, and every one will keep their truck. The only confusion comes in, when a driver's truck is down, we have to assign him to another truck. We don't have no choice. We don't have a fleet of spare drivers and because the DNR and the City of Detroit and Wayne County, we have to move the garbage. It has to be moved. We can't leave the garbage outside of the building. It has to be moved, and a driver gets a little teed when he has to go on another truck, but they basically know they have to drive other trucks at times.

MR. LEIB: You may take the witness.

CROSS EXAMINATION

Q (By Miss Engel) Mr. Madary, you just stated that you have to move the garbage out of the yard?

A Yes, Ma'am.

Q And you are required to do that by the DNR, the department of natural resources, and the City of Detroit?

A And Wayne County.

Q And Wayne County. Then there is quite a bit of pressure on the company to make sure the garbage is being moved out of the yard regularly, is that correct?

A At times.

Q In May, in fact on May 14th, wasn't there quite a bit of garbage piled up?

A There was.

* * * *

[357] (By Miss Engel) So while Mr. Brown was assigned truck 245, he did drive other trucks at times, is that right?

A I do believe he did.

* * * *

Q (By Miss Engel) Had you ever made assignments in the past?

A Have I?

Q Yes.

A If one of my supervision or somebody didn't show up, I would make the assignments.

Q Had you ever assigned Mr. Brown to drive a truck in the past.

A I might have.

Q Do you recall his ever refusing to drive a truck before? You don't recall his refusing to drive a truck before, do you?

[358] A Well, I am trying to answer the question.

Q Isn't that right?

A I would say that Mr. Brown was in love with 245.

JUDGE WAGMAN: Is your answer he refused at other times?

THE WITNESS: Yes, he refused.

Q (By Miss Engel) You personally—you just stated, Mr. Madary, that you are not sure if you ever assigned him another truck.

A I can't recall, but—

Q You can't recall?

A No.

Q You can recall that he refused?

A He refused.

Q Well, how can you—you deny or you say he refused, yet you say you don't recall ever assigning him a truck.

A May I explain to you and the court?

Q Yes. You said every one has a particular assignment to their own truck, is that right?

A They have a particular fondness of the truck they are assigned to.

Q And Mr. Brown was not unusual in that regard, was he?

A He was not unusual in that regard.

* * * *

[363] Q Now are you saying you repair a truck if there is no problem with it?

A We repair a truck if there is a problem. We do that.

Q You repair something if there is nothing wrong with it?

A We have mechanics to do that.

Q They repair things that are all right?

A They repair things that are all right because of the driver telling them—

JUDGE WAGMAN: Wait.

MISS ENGEL: Your Honor—

JUDGE WAGMAN: The answer is yes.

MR. ENGEL: That's all.

REDIRECT EXAMINATION

Q (By Mr. Leib) Mr. Madary, will you explain yourself?

A A driver with drive [*sic*] the City Disposal and come in and tell one of my mechanics the brakes are no good, they are overheating and he ain't got enough air. My mechanics are instructed to take the truck for a ride. The mechanic knows if you have got some adjustment left on the brakes, it is there, and the mechanic is not always smarter than a driver, but he has to find the problem. The driver will come in and tell me there is something wrong with the truck. Park the truck just so he can go home, and leave something on the bulletin board at times when there is physically nothing wrong with the truck. I have had that happen to me. [364] Many times they will come right back in and go to work the next morning and my mechanic was looking for nothing.

Q Mr. Madary, with reference to these repair orders on truck 244, any other records pertaining to any repairs or work on truck 244 other than this pile that was given to me?

A I have looked in every box, every record I can humanly find in that garage, and if I had anything on 244 pertaining to this case.

Q Other than these?

A Other than them. I wouldn't know where to look. I might find something but I wouldn't know where to look.

JUDGE WAGMAN: That's all you could find?

A THE WITNESS: That's all I could find.

Q (By Mr. Leib) You spoke of a minor thing being recorded. What did you have reference to?

A No blinkers, no lights on the trailers, and mud flap missing, possibly an air leak that is minor.

Q Therefore you wouldn't make a record such as that?

A Would not make a record. My mechanic would be sitting there making records all day long.

MR. LEIB: That's all.

JUDGE WAGMAN: Anything else?

MISS ENGEL: Mr. Madary, you referred to a brake adjustment as a minor job, didn't you?

THE WITNESS: It is a minor job and major.

[365] JUDGE WAGMAN: It can be both.

THE WITNESS: If it is a major, it is a major. If it is just a minor—you could go to the gas station and all the man takes is a wrench and tighten your brakes in a matter of minutes. It is not a matter of weeks.

MISS ENGEL: A problem with the brakes might not be reflected in these exhibits 9(a) through (p), is that correct?

THE WITNESS: It is possible.

* * * *

KEITH W. HALL

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

JUDGE WAGMAN: Speak up good and loud.

DIRECT EXAMINATION

Q (By Mr. Leib) Your name is what?

A Keith William Hall.

Q Where are you employed, Mr. Hall?

A I am employed by City Sand and Land Fill.

Q In what capacity are you employed?

A As a mechanic, master mechanic.

[366] Q Where do you work?

A At City Disposal.

Q Where at City Disposal?

A In the garage.

Q That is located where?

A 1550 Harper, as our relay station.

Q Is that in the city of Detroit?

A It is in the city of Detroit.

Q What are your duties, Mr. Hall, and before you answer that, when did you first become employed?

A By whom?

Q Either one or both?

A At City Sand I started in 1975; when it was owned by Sandtest, and later that year City Disposal bought the property, bought the business.

Q That was in what year?

A 75.

Q And you continued on?

A Yes, I did.

Q Did you have a specific designation?

A Yes, mechanic.

Q What was that?

A Mechanic.

Q What are your duties?

A To repair and maintain the equipment on the property.

* * * *

[375] Q Tell the court in your own words what, if any thing, you heard stated between Mr. Brown and Mr. Ammerman?

A Mr. Ammerman informed Mr. Brown that his truck would be down for the day and he should go see Mr. Jasmund and see if he could be assigned to another truck.

Q What, if anything, did Mr. Brown say then?

A Mr. Brown informed Mr. Ammerman that 245 was his truck, and that he had—he had—he was told he would not have to drive any other truck other than that, because his truck was a special unit, referring to the trailer that he was hauling.

Q And any particular meeting?

A He said he had a meeting with Mr. Sove.

Q That he didn't have to drive any other truck?

A He would not have to drive, in his terms he would not have to drive a long trailer.

Q That's what he stated?

A That's what Mr. Brown stated.

Q Now did you over hear the conversation of Mr. Ammerman [376] instructing him to see Mr. Jasmund?

A Yes.

* * * *

JUDGE WAGMAN: Wait. Give us everything you can remember that went on between Mr. Ammerman and Mr. Brown.

THE WITNESS: Mr. Ammerman, like I stated, told Mr. Brown to see Mr. Jasmund. To say exactly what they said, I don't know, but as a fact he was informed his truck would be down for the rest of the day and there may be another truck available.

JUDGE WAGMAN: What did Mr. Brown say?

THE WITNESS: He didn't want to drive another truck, that his unit—the truck that he drives is actually faster and he was able to make more money with his truck and he didn't want to drive another truck because it involved more work, and Mr. Ammerman told him to see Mr. Jasmund.

JUDGE WAGMAN: What, if anything, did Ammerman say about, you know, what he should do? Anything else? What, if any, other suggestion did Ammerman make to Mr. Brown in that conversation about what he should do the rest of the day?

THE WITNESS: Okay.

[377] JUDGE WAGMAN: Do you remember that?

THE WITNESS: There was something.

JUDGE WAGMAN: What did he say?

THE WITNESS: He said well why don't you just go home, which was in response to what most mechanics would tell a driver. In other words, get out of here, out of my sight because Mr. Brown was excited.

Q (By Mr. Leib) All right, now you heard the conversation where he was told to see Otto Jasmund?

A Yes, I did.

* * * *

Q (By Mr. Leib) Mr. Hall, will you describe the type [378] of equipment, tractor 245 and the trailer attached thereto, assigned to Mr. Brown?

A All right, 245 pulls a trailer known as a wood box. It is somewhat smaller than our regular trailers.

Q What about maneuverability?

A It is easier to maneuver in the yard and in the dump and it unloads itself faster.

Q And as a consequence thereof, what is your opinion as to the number of loads a driver of this type of equipment, as compared to the other tractors and trailers, would be able to drive?

MR. ENGEL: Objection.

MR. LEIB: I am simply asking for a comparison.

JUDGE WAGMAN: There is an objection. What is it?

MISS ENGEL: I don't think the witness is competent to answer that. He is a lay witness and not an expert in the situation.

JUDGE WAGMAN: On cross examination you can go into that. This is his view, based on his experience. as a mechanic.

MISS ENGEL: Oh, yes, I understand that.

THE WITNESS: I used to drive a truck.

JUDGE WAGMAN: Go ahead and give your best answer.

THE WITNESS: Let's hear the question all over again.

Q (By Mr. Leib) You stated, as I best recall, that Mr. [379] Brown was assigned a smaller light trailer, wooden box and so forth.

A Yes, that's right.

Q And taking the one that was assigned to him, this particular trailer, tractor trailer, would require him to use tarpons?

A Not at that time.

Q And as a consequence thereof was this tractor trailer lighter or heavier than the others?

A A lot lighter.

MISS ENGEL: Objection. I don't know what this has to do with the case, the weight of the truck.

JUDGE WAGMAN: He was there and observed. You can ask him questions.

THE WITNESS: Do you mean do they have the weight on the truck?

JUDGE WAGMAN: I thought a truck had printed on the side the—

THE WITNESS: The gross weight?

JUDGE WAGMAN: Its loaded weight, unloaded weight.

THE WITNESS: Gross vehicle weight.

Q (By Mr. Leib) Are you familiar with the gross weight?

A It is stated on the license plate. I don't recall exactly what is stated on its plate.

Q Incidentally, did you drive at any time during your [380] career?

A Yes.

Q As a truck driver?

A Yes.

Q Where?

A For Ace Construction Equipment.

Q What type of equipment did you drive?

A Semi type equipment.

Q Similar to the one involved here?

A Yes.

Q How many miles would you have driven?

A Thirty or forty thousand miles.

Q Mr. Hall, with regard to maneuverability of tractor 245, can you explain to the court the distinction between 245 and the other tractors, with special emphasis with regard to maneuverability?

MISS ENGEL: Objection.

JUDGE WAGMAN: On what ground?

MISS ENGEL: First of all, it is leading.

JUDGE WAGMAN: No. He asked him to talk about maneuverability. He didn't tell him, you know—he just asked him about the topic of maneuverability.

MISS ENGEL: Second of all, I don't think he is competent to discuss that.

JUDGE WAGMAN: If he doesn't know, he is going [381] to tell me he doesn't know, and if he has some knowledge

he can tell us, and you will have an opportunity to cross examine. Proceed.

THE WITNESS: Okay. The wooden box trailer behind 245, is a shorter trailer. It is easier to maneuver around the dump. It is lighter, and has tighter turning radius, all of which are helpful in a land fill situation, because you have an extremely small area to unload your refu[s]e.

Q (By Mr. Leib) Now in regard to dumping loads of this type, this particular type of equipment that was assigned to Mr. Brown, tell the court in your own words, it is easier, faster, slower, et cetera? Just explain that?

A It was definitely faster because he did not have a trap. He was topped off with dirt which didn't require him to climb up on the trailer and roll back the tarp, and the dumping process was a lot faster. 245 wood box is a d[um]pster. Lift cylinders picks the box up and the load slides out. The long trailers are ejection type trailers with a large ramp in; the front of the trailer, which pushes the garbage out and those trailers are tarped, and it requires time at the dump to roll the tarps back and secure them.

* * * *

[GC Exhibit 2]

THIS AGREEMENT, made and entered into this 1st day of November, A.D., 1977, by and between CITY DISPOSAL SYSTEMS, INC. located at Detroit, Michigan, party of the first part, and hereinafter termed the Employer, and Local Union No. 247, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, located at 2741 Trumbull Avenue, Detroit, Michigan, party of the second part, hereinafter called the Union.

WHEREAS, both parties are desirous of preventing strikes and lockouts and other cessations of work and employment; and of maintaining a uniform wage scale, working conditions and hours of employees of the Employer; and of facilitating peaceful adjustment of all grievances which may arise from time to time between the Employer and his employees; and of promoting and improving peaceful industrial and economic relations between the parties;

* * * *

ARTICLE VIII

ARBITRATION AND GRIEVANCE PROCEDURE

Section 1. It is mutually agreed that all grievances, disputes or complaints between the Company and the Union, or any employee or employees, arising under the terms of this Agreement shall be settled in accordance with the procedure herein provided and that there shall at no time be any strikes, lock-outs, tie-ups of equipment, slow-downs, walk-outs or any other cessation of work except as specifically agreed to in other superseding section of this Contract.

Every effort shall be made to adjust controversies and disagreements in an amicable manner between the Employer and the Union. In the event that any grievance cannot be settled in this manner, the question may be submitted by either party for arbitration as hereinafter provided.

Section 2. (a) Should any grievances, disputes or complaints arise, there shall be an earnest effort on the part of the parties to settle such promptly through the following steps:

Step 1. By conference between the aggrieved employee, the shop steward, or both, and the foreman of his department.

Step 1-a. Before proceeding to Step 2 below, it shall be the responsibility of the aggrieved to reduce any grievance to writing on the regular grievance form provided for by the Local Union.

Step 2. By conference between an official or officials of the Union and the manager, or representative of the company delegated by the manager, or both.

Step 3. In the event the last step fails to settle the complaint, it shall be referred to the Board of Arbitration upon the request of either party. The President and/or Executive Board of the Local Union shall have the right to determine whether or not the grievance is qualified to be submitted for arbitration by the Union.

(b) The Board of Arbitration shall consist of one (1) person appointed by the Union and one (1) person appointed by the employer. In case of disagreement, a third member shall be chosen by members of the Board of Arbitration.

Either party may submit a list to the other; said list to contain the names of responsible citizens, any of which shall be capable of handling an arbitrati[on]. The parties shall select one (1) individual from the lists and that person shall act as the third member of the Board of Arbitration. If the parties fail to agree on the third member, they shall request jointly from the Federal Mediation Service a list of five (5) prospective arbitrators. Each party shall then alternately strike a name from said list until four names have been removed. The one remaining shall be the person selected to act as the third member of the Board of Arbitration.

A majority decision of the Board of Arbitration shall be rendered without undue delay and shall be final and binding on both parties.

The Board of Arbitration shall have the sole and exclusive power and jurisdiction to determine whether or not a particular grievance dispute or complaint is arbitrable under the terms of this Agreement. In the event that it is determined that such grievance, dispute or complaint is not

arbitrable, the Union shall have the right to strike in support of its position of all such non-arbitrable matters.

(c) Written grievances must be taken up promptly and no grievance will be considered or discussed which is presented later than thirty (30) days after the employee and the union have had actual knowledge of the contract violation.

Section 3. It is further agreed that in all cases of any unauthorized strike, slow-down, walk-out, or any unauthorized cessation of work that the Union shall not be liable for damage resulting from such unauthorized acts of its members. While the Union shall undertake every reasonable means to induce such employees to return to their jobs during any such period of unauthorized stoppage of work mentioned above, it is specifically understood and agreed that the Company, during the first twenty-four (24) hours of such unauthorized work stoppage, shall have the sole and complete right of reasonable discipline short of discharge. Such employee shall not be entitled to, or have any recourse to, any other provisions of this Agreement.

Section 4. After the first twenty-four (24) hour period of such stoppage, however, the Company shall have the right to immediately discharge any employee participating in any unauthorized strike, slow-down, walk-out, or any other unauthorized cessation of work, and such employee shall not be entitled to, or have any recourse to, any other provisions of this Agreement.

Section 5. Should either party not accept and abide by the procedure set forth in this Article, or the decisions resulting therefrom, then, in such instance, any provisions of this Contract notwithstanding, the party violating the terms of this Article shall be denied the benefits of this Article.

* * * *

ARTICLE XI

LIMITATIONS OF AUTHORITY AND LIABILITY

Section 1. No employee, union member or agent of the Union shall be empowered to call or cause any strike, work stoppage or cessation of employment of any kind whatso-

ever without the expressed approval of the Executive Board of the Local Union through its President. The Union shall not be liable for any such activities unless expressly so authorized.

Section 2. Any individual employee or group of employees who willfully violate or disregard the arbitration and grievance procedure set forth in Article VIII of this Agreement may be summarily discharged by the Employer without liability on the part of the Employer or the Union.

Section 3. The authority of the Union stewards shall be limited to acts or functions which said stewards are expressly authorized to perform by the Executive Board of the Local Union.

* * * *

ARTICLE XXI EQUIPMENT, ACCIDENTS AND REPORTS

Section 1. The Employer shall not require employees to take out on the streets or highways any vehicle that is not in safe operating condition or equipped with the safety appliances prescribed by law. It shall not be a violation of this Agreement where employees refuse to operate such equipment unless such refusal is unjustified.

Section 2. Under no circumstances will an employee be required or assigned to engage in any activity involving dangerous conditions of work or danger to person or property, or in violation of an applicable statute or court order, or governmental regulation relating to safety of person or equipment.

Section 3. Any employee involved in any accident shall immediately report said accident and any physical injury sustained. When required by his Employer, the employee, before starting his next shift, shall make out an accident report, in writing, on forms furnished by the Employer and shall turn in all available names and addresses of witnesses to any accidents. The employee shall be paid for all time involved in completing accident reports. Failure to comply with this provision shall subject such employee to disciplinary action by the Employer.

Section 4. Employees shall immediately, or at the end of their shift, report all defects of equipment. Such reports shall be made on a suitable form furnished by the Employer and shall be made in multiple copies; one copy to be retained by the employee. The Employer shall not ask or require any employee to take out equipment that has been reported by any other employee as being in an unsafe operating condition until same has been approved as being safe by the mechanical department.

When the occasion arises where an employee gives written report on forms in use by the Employer of a vehicle being in an unsafe working operating condition, and receives no consideration from the Employer, he shall take the matter up with the officers of the Union who will take the matter up with the Employer.

Section 5. Where new types of equipment for which rates of pay are not established by this Agreement are put into use within operations covered by this contract, rates governing such operations shall be subject to negotiations between the parties. Rates agreed upon or awarded shall be effective as of date equipment is put into use.

Section 6. The Employer shall install heaters, defrosters and windshield washers on all trucks and tractors and keep same in an operating condition.

* * * *

(THIS PAGE INTENTIONALLY LEFT BLANK)

GRIEVANCE REPORT

TRANSFER LOCAL No. 347

Date 5-15-79

Name James R. Brown Company Working for CITY DISPOSABLE SYSTEMS INC
 Street 18134 Rio Del Rio
 City or Post Office DETROIT MICH 48207
 Residence Phone No. 853-8225
 How Long Employed 2 yrs. 6 mos. Address 1550 HARPER
 Classification Driver Telephone No. 913-3700
 Rate per hour \$6.50
 Supervisor's Name M. Hill

On 5-14-79 I received a voluntary quit notice for discharge of Order (refused to drive truck # 244)

I do not think this is justified, I was told first by the head of the mechanical dept. that my truck # 245 would be down for the rest of the day, and for me to go home. I was then told by the supervisor in front of witnesses by other employees that my truck was down for me to go home, later he told me if I wanted to take truck # 244 I told him no.

Truck # 244 was reported by the supervisor down as being repaired. On 21 rec'd of the fact. Truck # 244 was repaired but working day, and has not been repaired.

There is no pay rate or classification for this new equipment in the contract governing such equipment on 21 rec'd.

Date Reported to Board:

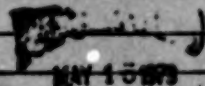
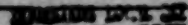
5-14-79

Signed By:

James R. Brown

How Handled:

APPENDIX A

City Sand and Landfill, Inc.

City Sand and Landfill, Inc.

1550 Harper

Detroit, MI 48219

Office 800-370-3709

London File 404-2000

NOTICE TO EMPLOYEE OF FOLLOWING

WARNING NOTICE

LAY-OFF NOTICE

DISCHARGE NOTICE

VOLUNTARY QUIT

RE:CALL BACK TO WORK

EMPLOYEE'S NAME JAMES BROWN. DATE: 5-14-77

On 5-14-79 you violated the following company rule (specify violation):
(DATE)

DISOBEYING OF ORDERS (REFUSED TO
RIVE # 244).

Your conduct was not in keeping with efficient operation and we therefore find it necessary to

VOLUNTARY QUIT

NATIONAL LABOR RELATIONS BOARD
CA-16792

7-CA-16793
Docket No.

Docket No.

OFFICIAL EXHIBIT NO.

Pro

Dispositivo

M

E.

10/15/81

In the matter of

— 50 —

DATE _____

Wine & Spirits Report

3

75 Page: 13

RECEIVED FOR FILING
OFFICIAL EXHIBIT NO. 1

Disposition: Received
Recorded: FILED

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

No. Page: /

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BY James S. Thorburn
DEPUTY COUNTY CLERK

PEOPLE OF THE STATE OF MICHIGAN

vs.

No. CR 69-5788

JAMES RICHETT BROWN

Respondent

JUDGE'S STATEMENT

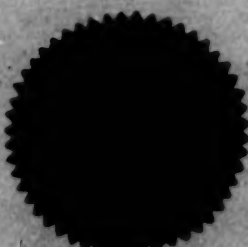
The above named respondent, JAMES R. BROWN, was found guilty by jury of the crime of UTTERING AND PUBLISHING and was on this date sentenced by this court to a minimum term of Two and one-half (2-1/2) years and a maximum term of Fourteen (14) years, with a credit of 90 days as a deduction from the minimum and maximum term for the time the respondent was incarcerated in the Oakland County Jail. This sentence is to be served in the State Prison of Southern Michigan at Jackson, Michigan.

The court made no recommendation as to the release of the respondent after the expiration of his minimum term.

Copy of Probation Officer's report is attached hereto.

James S. Thorburn
James S. Thorburn, Circuit Judge

Dated: April 30, 1970



STATE OF MICHIGAN }
COUNTY OF OAKLAND } SS.

I, LYNN D. ALLEN, County Clerk for the County of Oakland, Michigan, Circuit Court thereof, the same being a true and correct copy and having a Seal, hereby certify that said is a true copy.

I, James S. Thorburn, I have personally met and heard and signed the Seal of said Court this April 30, 1970

LYNN D. ALLEN, Clerk Register of Deeds

By: James S. Thorburn Deputy Clerk

Supreme Court of the United States

No. 82-960

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

v.

CITY DISPOSAL SYSTEMS, INC.

ORDER ALLOWING CERTIORARI. Filed March 28, 1983.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted.